In the

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. [redacted] 19

UNIVERSAL INTERPRETIVE
SHUTTLE CORPORATION,
Petitioner,

v.

WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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INDEX

TABLE OF CASES

STATUTES INVOLVED

OTHER ACTS

MISCELLANEOUS

INDEX TO APPENDICES

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QUESTIONS PRESENTED

1. Whether the Washington Metropolitan Area Transit Commission, pursuant to the Washington Metropolitan Area Transit Regulation Compact, has regulatory jurisdiction over the for-hire transportation service which Universal Interpretive Shuttle Corporation proposes to perform in the District of Columbia under a contract with the Secretary of the Interior.

2. Whether the Secretary of the Interior has the statutory authority to operate a for-hire transportation service in the District of Columbia.

3. Whether the Congressional Franchise given to D.C. Transit protects it against the for-hire transportation service which Universal Interpretive Shuttle Corporation proposes to perform in the District of Columbia under a contract with the Secretary of the Interior.

COUNTERSTATEMENT OF THE CASE

The Mall area of the District of Columbia, bounded from north to west by the White House, Grant Memorial, Jefferson Memorial, and the Lincoln Memorial, is a national park area under the administrative jurisdiction of the Secretary of the Interior ("Secretary"), through the National Park Service ("Service"). Each year millions of visitors come to the Mall to view the many national monuments, museums, and memorials located thereon. Some 15 million visitors were expected in 1967, a figure which may grow to 35 million by 1980. (Gov't. Ex. 3, p. 2; Executive Order of June 10, 1933, 5 U.S.C. sec. 132; D.C. Code (1967 ed.) § 8-108; Act of August 8, 1953, 67 Stat. 496, 16 U.S.C. sec. 1c.; Gov't Ex. 3, 3 pages of tabulations attached thereto; Gov't Ex. 7, pp. 2-3).

Several common carriers of passengers by motor vehicle, including D.C. Transit System, Inc. ("Transit"), have been performing sightseeing operations in the Mall area for the particular benefit of such visitors. These operations consist of lecture tours conducted by guides licensed by the District Government after a written examination of their knowledge of points of interest in the District. Such operations have been certificated by the Washington Metropolitan Area Transit Commission ("Commission") in accordance with the provisions of the Washington Metropolitan Area Transit Regulation Compact ("Compact"), approved by Act of September 15, 1960, 74 Stat. 1031, D.C. Code §§ 1-1410 to 1416, giving the Commission jurisdiction over

passenger transportation for hire by motor vehicle performed in the District of Columbia and the nearby counties in Maryland and Virginia (the "Metropolitan District"). (WMATC Ex. 3; Transit Ex. 1, pp. 3-4.)

On March 17, 1967, the Department of the Interior entered into a contract with Universal Interpretive Shuttle Corporation ("Universal") for the provision of a daily, for-hire, "interpretive shuttle service" for the accommodation of visitors to the Mall. Such service will be operated on city streets outside the Mall and under the jurisdiction of the District Government as well as on city streets within the Mall. (Gov't Exs. 4, Pet. App. 21-44, and 6; Transit Ex. 2, pp. 1-2; Opinion of the trial court, Pet. App. 6, no. 1.

Under the contract, Universal will operate "articulated trams", in both round-trip and shuttle service, which will stop at 11 points of interest encompassing some 23 national monuments, memorials, museums and Federal buildings. Guides accompanying the trams will provide a continuous narration approved by the Service. Additionally, stationary guides will be provided at the 11 points of interest to furnish information to visitors whether or not they have paid for the narrated tour. (Gov't Ex. 4, Pet. App. 22, 24, and 25; Affidavit of Jay S. Stein, dated April 1, 1967, reproduced as Appendix "A" hereto, pp. 2-3; News Release of the Department of the Interior, dated March 26, 1967, reproduced as Appendix "B" hereto.)

The route to be followed by Universal will be essentially that used by the Service itself during a six-week experiment conducted in 1966, involving the same 11 points of interest noted above. Such route will be operated on a schedule requiring three trips per hour within the first four months of service and a minimum of twelve trips per hour within a year. Both the route and the schedule of trips are subject to final approval of the Secretary. (Gov't. Ex. 3, p. 1 and attached map; Gov't Ex. 4, Pet. App. 23-25, 29, and 30; Affidavit of Jay Stein, p. 1.)

Universal decided not to apply for certification by the Commission of its proposed operation, including that portion to be performed on city streets outside the Mall, after having been advised by the Service that such certification was not necessary. (WMATC Ex. 1, attachments 1 and 2).

For its part, Transit provides daily sightseeing tours, under both individual and group charter arrangements, with licensed guides, which cover almost all of the 23 buildings and monuments to be featured by Universal. These tours are operated, to a substantial extent, over the same city streets to be used by Universal. Transit also provides regular route or scheduled service over some 20 routes traversing the major Mall arteries to be used by Universal. It has been estimated that Transit will lose over a million dollars annually in combined sightseeing and regular-route revenues as a result of Universal's proposed operation. (Transit Ex. 2, pp. 2-3 and attachments 2-9).

SUMMARY OF ARGUMENT

Under the Compact, no for-hire transportation of passengers by motor vehicle can be lawfully performed within the District of Columbia, including national park areas administered by the Secretary, through the Service, without certification by the Commission. While transportation performed by the Government is excepted from the Commission's jurisdiction, the transportation in issue is not covered by such exception. If, however, the transportation in issue is excepted from the Commission's jurisdiction, the Secretary has no authority to perform such transportation. Moreover, independent of the Compact, the Congressional Franchise granted to Transit prohibits a competitive service in the District of Columbia of the nature proposed by Universal without certification by the Commission.

ARGUMENT

I

Pursuant to the Compact, the Commission Has Regulatory Jurisdiction Over the For-hire Transportation Operation Which Universal Proposes To Perform in the District of Columbia Under a Contract With the Secretary.

A. The Commission's Jurisdiction Extends to For-hire Transportation Operations Performed in Whole or in Part on Federal Property Within the Metropolitan District.

Universal first argues that the Commission has no jurisdiction over its proposed operation on the Mall because the Secretary, pursuant to several statutes enacted prior to the Compact, has been given an "exclusive" control thereover which has not been altered by enactment of the Compact. This argument is based upon the premise that the Interstate Commerce Commission (ICC) and the Public Utilities Commission of the District of Columbia (PUC), two of the four predecessors of the Commission, never possessed any authority which modified such "exclusive" control. As will be discussed below, the Secretary did have "exclusive" control over national park areas, including the Mall, until legislation in the 1930's gave the ICC and PUC certain regulatory authority over for-hire motor carrier operations performed thereon. With the enactment of the Compact such authority was incorporated into the Commission's overall responsibility to improve transit and alleviate traffic congestion within the Metropolitan District "on a coordinated basis, without regard to political boundaries". (Compact, Article II.)

This jurisdictional question can best be discussed by a chronological analysis of the pertinent statutes. By the Act of July 1, 1898, 30 Stat. 570, D. C. Code (1967 ed.) § 8-108, Congress gave the Secretary, through predecessors of the Service, "exclusive charge and control" of park areas in the District of Columbia. Around the same period the Secre-

tary was similarly granted "exclusive control" over several other park areas throughout the country.[1]

By the Act of August 25, 1916, 39 Stat. 535, 16 U.S.C. secs. 1-3, the Service was established to provide, under the Secretary's direction, for the "supervision, management, and control" of the national park system. Later, by the Act of May 26, 1930, 46 Stat. 382, 16 U.S.C. sec. 17b, the Secretary was authorized "to contract for services or other accommodations" provided in the national parks.

At this point in time Universal, pursuant to the Secretary's "exclusive" control over national parks and his authority "to contract for services", certainly could have performed the operation in issue and been subject to only the Secretary's regulation. However, legislation was passed in 1931, 1935, and 1960 which has qualified the Secretary's "exclusive" jurisdiction insofar as for-hire operations of motor carriers of passengers are concerned.

The Act of February 27, 1931, 46 Stat. 1324, D.C. Code § 40-603(e), provided in part as follows:

> That as to all common carriers by vehicles which enter, operate in, or leave the District of Columbia, the power to route such vehicles within the District . . ., to regulate their schedules. . ., to locate their stops. . . is vested in the (PUC).

Pursuant to this authority the PUC regulated the routes of Transit's predecessor which traversed the Mall without objection from the Secretary. As an example thereof, PUC Order No. 1623, dated August 5, 1937 (reproduced as Appendix "C" hereto), granted the following route authority[2]:

[1] Sequoia National Park, Act of September 25, 1890, 26 Stat. 478, 16 U.S.C. sec. 43; Mount Rainier National Park, Act of March 2, 1899, 30 Stat. 994, 16 U.S.C. sec. 92; Wind Cave National Park, Act of January 9, 1903, 32 Stat. 765, 16 U.S.C. sec. 142; Mesa Verde National Park, Act of June 29, 1906, 34 Stat. 617, 16 U.S.C. sec. 112; Glacier National Park, Act of May 11, 1910, 36 Stat. 354, 16 U.S.C. sec. 162.

[2] The PUC regulated the fares charged by all public utilities, including common carriers, operating in the District pursuant to the Act of March 4, 1913, 37 Stat. 974, 994, D. C. Code § 43-401.

> Capitol Transit Company be and it is authorized and directed to operate buses over the following route: From terminal on the south side of P Street, Southwest, east on P Street to 4th Street, *north on 4th Street to Washington Drive, west on said Drive to 9th Street*, north on 9th Street to Pennsylvania Avenue. . . (The five-block Washington Drive portion of this route is entirely in the Mall.)

With the enactment of Part II of the Interstate Commerce Act, Act of August 9, 1935, 49 Stat. 543, 49 U.S.C. sec. 301 et seq., a further limitation was placed on the previously "exclusive" character of the Secretary's jurisdiction over national parks throughout the country. Section 203(b)(4) of this Act, 49 U.S.C. sec. 303(b)(4) provides:

> Nothing in this part except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include . . . (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments.

In accordance with this language, in *Motor Carrier Safety Regulations – Exemptions*, 10 MCC 533, 538 (1938), the ICC applied its safety regulations to motor carrier operations performed in any of the national parks, including presumably the Mall. The Secretary has never challenged such application of ICC's safety jurisdiction. Furthermore, the ICC has even exercised economic jurisdiction over motor carriers operating in national parks consistent with and subject to the statutory authority of the Secretary. See, for example, *Smoky Mountain Tours Company Common Carrier Application*, 10 M.C.C. 127 (1938), and *Huff Common Carrier Application*, 27 M.C.C. 643 (1941).

Next we come to the statute which lies at the very core of this controversy, the Act of September 15, 1960, 74 Stat. 1031, D.C. Code § 1-1410 et seq., approving the Compact. Before considering the effect this legislation had on the

jurisdiction of the Secretary over national parks, it is helpful to bear in mind the primary objective of the Compact.

Prior to 1960 four separate agencies regulated for-hire motor transportation performed in the Metropolitan District – the ICC, PUC, and State commissions in Maryland and Virginia. The Compact was intended to centralize the regulatory responsibilities of these four agencies in a single agency, the Commission, and thereby substitute a comprehensive system of regulation for fragmentary or piecemeal regulation.[3] The United States Court of Appeals for the District of Columbia Circuit has described this regulatory scheme as follows:

> When Congress consented to the Compact in 1960, it elected to treat the metropolitan area of Washington as a geographical unit, with the Commission as the central licensing and rate-making authority. No one could engage in the transportation covered by the Compact except upon its terms; and these included the issuance by the Commission of a certificate of public convenience and necessity.[4]

Turning now to a consideration of the impact of the Act of 1960 on the Secretary's jurisdiction over national parks, Section 3 thereof, 74 Stat. 1050, D. C. Code § 1-1412, provides in part as follows:

> [N]othing in this Act or in the Compact shall affect the normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities.

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[3] House Report No. 1621 of the 86th Congress, 2d Session, accompanying H.J. Res. 402 (May 18, 1960), pp. 6-7.

[4] *D.C. Transit System, Inc, v. Washington Metropolitan Area Transit Com'n*, Case No. 20,188, decided March 7, 1967, pet. for cert. den. October 9, 1967.

Although the legislative history of the Compact is silent as to the congressional intent underlying this language, such intent can be reasonably deduced.

First, if, as contended by Universal, the Congress intended to exclude from the Commission's jurisdiction national parks under the administration of the Secretary, it surely would have used plain language to such effect. The language used, however, is not descriptive of such administration.[5] Rather, it is descriptive only of the limited traffic or police authority which the signatory states of Maryland and Virginia, and even their political subdivisions, were allowed to retain over for-hire motor carriers of passengers subject to the Commission's comprehensive regulation.

In this connection the Interior Department suggested a clarifying amendment to Section 3 which would have specifically referred to the statutes under which the Secretary administers the national park system. The very failure of the Congress to enact such amendment strongly indicates an intent to include national parks in the Metropolitan District within the purview of the Commission's jurisdiction.[6]

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[5]The Department of the Interior underscored this fact in its legislative comments on the Compact prior to its enactment. See p. 49 of House Report No. 1621, *supra*. *Cf.* Section 209(b) of the Interstate Commerce Act, 49 U.S.C. sec. 309(b).

[6]The Interior Department recommended incorporation of the following language in Section 3:

> [N]othing in this Act or in the Compact shall affect the authority and responsibility of the Secretary of the Interior pursuant to Section 3 of the Act of August 25, 1916, as amended, and other Acts of Congress controlling the development and use of national parks, monuments, and reservations comprising the National Park System. *Ibid.*

As no mention of such recommendation is made by the House Judiciary Committee in its report on H.J. Res. 402, it cannot be said with certainty that the Committee rejected the matter on the merits. Such explanation would, however, seem more reasonable than its alternative that the Committee entirely overlooked or neglected to consider a recommendation of an executive department.

Second, the language of the second proviso of Section 3 must be construed in conjunction with other provisions in Section 3. The last sentence thereof provides:

> Notwithstanding any provision of this section to the contrary, the jurisdiction of the Public Utilities Commission of the District of Columbia and of the Interstate Commerce Commission over all carriers and persons subject to the provisions of the Washington Metropolitan Area Transit Regulation Compact are hereby transferred, as and to the extent provided therein, to the Washington Metropolitan Area Transit Commission.

Such provision surely indicates that the regulatory authority which the predecessors of the Commission exercised over operations of for-hire motor carriers performed in national parks in the Metropolitan District has been vested, during the life of the Compact, in the Commission.[7]

Third, the Compact itself specifies the type of operations that are intended to be excepted from the Commission's jurisdiction. Five such operations are enumerated in Section 1(a) of Article XII. None of these specific exceptions applies to operations performed by for-hire motor carriers in park areas.

Fourth, it would have been entirely inconsistent for the Congress to have authorized the Commission, under Article II of the Compact, to regulate "on a coordinated basis without regard to political boundaries within the Metropolitan District" and then to have established such a political boundary over national parks.

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[7] In this connection, Section 21 of Article XII of the Compact provides that all outstanding rules, regulations and orders of the ICC and PUC with respect to transportation or persons subject to the Compact shall remain in effect, and be enforceable as though they had been prescribed or issued by the Commission, "unless and until otherwise provided by such Commission in the exercise of its powers under this Act".

Finally, from a practical standpoint, if the Congress intended the Commission to discharge effectively its responsibility to improve transit operations within the Metropolitan District, it must surely have intended to give the Commission jurisdiction over the very heart of this District where literally millions of persons come each year and require for-hire transportation services.

The Act of October 9, 1965, 79 Stat. 969, 16 U.S.C. sec. 20, heavily relied on by Universal, neither gave the Secretary any new authority nor took any authority from the Commission. The principle purpose of such legislation was merely to put into statutory form policies which generally had been followed by the Service in contracting for concessions within the national parks.[8]

As noted by the Department of Justice on page 13 of its appellate brief in this proceeding:

> It is not necessary to find a grant of authority in the Act of October 9, 1965 . . . That statute was enacted not as a grant of authority to the Secretary to contract with concessionaires (an authority he had traditionally exercised under the pre-existing provisions of 16 U.S.C. sec. 17b) but to encourage a greater use of concessionaires by specifically authorizing the execution of contracts containing provisions advantageous to the concessionaires . . . Thus, the 1965 Act has no direct application to the congressional intent on the main issue, i.e., the alleged transfer of authority to the Washington Metropolitan Area Transit Commission in 1960.

Upon review of all the statutes involved, it is reasonably clear that notwithstanding the Secretary's broad administrative authority over national parks areas in the Metropolitan District, including his unquestioned authority to contract for the operation of for-hire transportation services

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[8] 1965 U. S. Code Cong. and Adm. News, p. 3489, citing Senate Report No. 765, 89th Congress, 1st Session, accompanying H.R. 2901 (September 22, 1965).

thereon, the Congress intended the regulatory requirements of the Compact to extend to for-hire transportation operations performed in all areas of the Metropolitan District, including national parks.

It should be emphasized that the foregoing discussion has assumed that the operation proposed by Universal will be performed entirely on the Mall. This is not the case, however. As recognized by the trial court, Universal's proposed operation will require its vehicles to cross 14th, 7th, 4th, and 2nd Streets which are outside park grounds and subject to the police jurisdiction of the D.C. Government.[9] Accordingly, even if the Commission has no authority to regulate Universal's operations on the Mall, it clearly has authority to regulate such operations on city streets outside the Mall.

In this connection, on page 8, footnote 2, Universal indicates that the "ultimate control" of city streets adjacent to the Mall is vested in the Director of the Service by D.C. Code § 8-144. This code provision merely extended to sidewalks around Federal land and to the carriageways of city streets lying between and separating Federal land the application of rules and regulations prescribed pursuant to D.C. Code §§ 5-204 and § 8-108, 110, 127, 135, and 143. While such designated provisions may have, as stated by the trial court on page 5 of its Opinion, authorized "the passage by Park authorities over the D.C. public streets", they certainly did not vest "ultimate control of such streets" in the Director or authorize passage thereover by a "concessioner" of the Director without a certificate from the Commission.

Certain statements by Universal warrant passing comment. On pages 14 and 15 Universal anticipates many impediments being imposed on the Secretary's management of the Mall if the Commission's jurisdiction over its proposed operation is upheld. The anticipated "irreconciable conflict" is completely unfounded. In practice, when two agencies adminis-

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[9] Pet. App. 6, n. 1.

tering separate laws have jurisdiction concurrent in nature requiring them to grant dual approval to certain operations, a comity generally exists which enables the agencies to discharge their fundamental responsibilities in a spirit of cooperation not frustration. In this connection, a dual jurisdiction now exists under the Compact whereby both the Commission and the ICC regulate such matters as safety, insurance, accounting, borrowing, and consolidations. No real conflicts have ever materialized from such dual regulation. There is absolutely no reason to believe that the Commission and the Service will be unable to establish a similar comity of regulations.[10]

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[10]The comity of regulations established between the ICC and the Secretary was described in *Motor Carrier Safety Regulations – Exemptions,* 10 M.C.C. 533, 538, as follows:

> Section 203 (b) (4) exempts from the general provisions of the act "motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments." The Secretary of the Interior has prescribed regulations governing the qualifications of employees and safety of operation and equipment of motor vehicles operated under his control, and those regulations have been carefully examined and compared with the regulations prescribed by the order of December 23, 1936. The only possible conflict between the regulations of the Secretary of the Interior and those prescribed by the order of December 23, 1936, is found in part IV of our regulations relating to the reporting of accidents. Representatives of the Secretary of the Interior and a committee representing operators of busses in national parks have informally advised the Bureau of Motor Carriers that they have no objections to reporting accidents to this Commission in the manner prescribed in part IV of the safety regulations, particularly as they recognize the desirability of compiling as complete accident statistics as possible. This being so, and the record showing no reasons to the contrary, the regulations prescribed by the order of December 23, 1936, are made applicable to carriers covered by this exemption.

On pages 15 and 16 Universal characterizes the Commission as an "essentially local body" established by a Compact "to which the United States is not itself a party". The implication is that such a body established by such a Compact could not have been intended to exercise any regulatory authority over a national shrine such as the Mall. Such characterization and implication will be fully discussed in Argument No. 4 herein.

On pages 16 and 17 Universal highlights the fact that a congressionally prepared chart setting forth the Federal statutes suspended by Section 3 of the consent legislation makes no reference to any of the statutes under which the Secretary administeres park areas in the Metropolitan District.[11] There is an obvious reason for such omission. The statutes administered by the Secretary, not, in the language of Section 3, fundamentally "relating to or affecting transportation under the Compact and to the persons engaged therein", were simply not suspended. As discussed hereinabove, the application of the Compact to park areas under the Secretary's administration is rooted not in the suspension of the Secretary's statutory authority but in the suspension and transfer to the Commission of the regulatory authority of the ICC and PUC existing prior to the enactment of the Compact.

Finally, on page 18 Universal cites *Tennessee v. United States*, 256 F.2d 244, 258 (6th Cir. 1958) and *Robbins v. United States*, 284 Fed. 39, 45 (8th Cir. 1922) as supporting the proposition that the United States has powers analogous to the police powers of the States by which it regulates the use of Government property. Transit is not disputing the general existence of such powers which, "with respect to the regulation of vehicles, control of traffic and use of streets . . .", has been reserved by Section 3 of the consent legislation. Transit is disputing the further proposi-

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[11] House Report No. 1621 of the 86th Congress, *supra*, pp. 29-30.

tion that such reservation resurrected an "exclusive" authority of the Secretary over national parks.

B. The Contract Between the Secretary and Universal Contemplates the Performance of a For-hire Transportation Operation Between Points in the Metropolitan District.

Universal contends on Pages 18-22 that its proposed Mall operation is not the type of "transportation" covered by Sections 1 and 2 of Article XII of the Compact. Universal argues, first, that such operation will not be a "commuter" or "mass transit" service and, second, that such operation will not be performed "on public streets" or "between any points" in the Metropolitan District. Universal's first argument is entirely negated by the legislative history of the Compact, the language of the Compact, and numerous court decisions affirming the Commission's jurisdiction over "non-commuter" operations. Universal's second argument is entirely negated by the facts.

Universal cites two passages from the Preamble to the Compact which, standing alone, suggest a Congressional concern over only "commuter" or interurban operations in the Metropolitan District. When such passages are viewed in the light of the following references in both the legislative history and the Compact to transit operations and traffic conditions *generally*, it is unquestionably clear that the Congress intended the Commission to have jurisdiction over all forms of for-hire transportation (sightseeing, charter, local, and interurban):

> The function of the instant Compact is to improve *transit* service offered by the existing privately owned companies through coordinated regulation and improvement of *traffic* conditions on a regional basis. [House Report No. 1621, 86th Congress, *supra*, p. 6]
>
> The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation and improvement of *transit* and the alleviation of *traffic* congestion within the Metropolitan District on a co-

> ordinated basis, without regard to political boundaries within the Metropolitan District. [Compact, Article II)
>
> Each of the signatories pledges to each of the signatory parties faithful cooperation in the solution and control of *transit* and *traffic* problems within the Metropolitan District . . . [Compact, Article X.] (Underscoring added.)

It is interesting to note in the Preamble itself that the purpose of the Compact is set forth in general terms as follows (D.C. Code § 1-1410):

> The establishment of a single organization as the common agency of the signatories to regulate *transit* and alleviate *traffic* congestion. (Underscoring added.)

Moreover, it should be emphasized that the nature of the operations intended to be covered by the Compact are set forth in Section 1(a) of Article XII in the most general terms – "transportation for hire . . . between any points in the Metropolitan District". Certainly, if the Congress intended to limit the Commission's jurisdiction to a particular type of service, it would have said something like "commuter or interurban transportation for hire. . ."

Finally, if Congress was not concerned with non-commuter operations performed within the District of Columbia, would it not have simply exempted such operations in the same fashion that intra-Virginia transportation is exempted by Section 1(b) of Article XII?

The Commission's jurisdiction over sightseeing or charter operations, clearly non– "commuter" in nature, has been affirmed in the following decisions:

> *Alexandria, Barcroft & Wash. T. Co. v. Washington M.A.T. Com'n.*, 323 F.2d 777 (4th Cir. 1963);
>
> *Gadd v. Washington Metropolitan Area Transit Com'n*, 121 U.S. App. D.C. 7, 347 F.2d 791 (1965);

Holiday Tours, Inc. v. Washington Met. Area Trans. Com'n., 122 U.S. App. D.C. 96, 352 F.2d 672 (1965);

D. C. Transit System, Inc. v. Washington Metropolitan Area Transit Com'n., 366 F.2d 542 (4th Cir. 1966).

Regarding Universal's contention that its vehicles will not be operated on "public streets or highways", Universal apparently seeks to distinguish streets in the Mall from other streets in the District of Columbia. No authority is cited, however, to support the proposition that a street under the police jurisdiction of the United States Government is less "public" than a street under the police jurisdiction of the D.C. Government. Furthermore, Transit is aware of no action taken to foreclose public travel on streets in the Mall area; its buses travel on such streets every day. In any event, Universal will have to operate on several city streets subject to the jurisdiction of the D.C. Government and therefore clearly "public streets".

Universal also contends that it will not operate "between any points" in the District, quoting language from Section2(a) of its contract with the Secretary which contemplates a service "originating and terminating at the same point, with no passengers embarking or debarking enroute". It would seem that a service originating at Point A, traveling to Point B, and returning to Point A is, from a physical standpoint, an operation between Points A and B whether or not any passenger is allowed to debark enroute. However, assuming *arguendo* the validity of Universal's contention, it is quite clear that the contract contemplates other types of services which will be operated "between points" in the District of Columbia. In Universal's own words on Page 9:

> the Contract contemplates that Universal may, with the approval of the Secretary, provide an interpretive shuttle service whereby passengers can commence the narrated tour, proceed to a given point of interest, debark, remain at that point of interest

and later join another tram at that point and continue the narrated tour.[12]

In view of the foregoing, it is readily apparent that Universal's proposed operation is fully covered by the description of the Commission's jurisdiction set out in Section 1(a) of Article XII.[13] Accordingly, Universal must obtain a certificate from the Commission as required by Section 4(a) of Article XII.

In passing, two statements on page 20 warrant some comment. First, Universal states that its movement of persons around the Mall is only "incidental" to the primary purpose of providing visitors with an interpretive service. Cannot the same statement be made about all the sightseeing operations certificated by the Commission?

Second, Universal states that its proposed service is distinguishable from and not competitive with existing sightseeing and charter services which operate within the confines of the national parks but pick persons up outside thereof. When it is considered that Universal's proposed service will duplicate Transit's existing service in the following four fundamental respects, it is obvious that the two services are not distinguishable and are competitive:

1. Operating over substantially the same streets, both inside and outside the Mall;
2. Providing a service attractive to the same class of persons—tourists;
3. Employing guides particularly knowledgeable about local points of interest;
4. Providing service to essentially the same points of interest.

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[12] As evidence of the unquestioned intent of both Universal and the Secretary to provide the described service, the Court's attention is respectfully directed to page 2 of the News Release of the Department of the Interior and to page 3 of the Affidavit of Jay Stein which are reproduced in the Appendix hereto.

[13] Universal has not disputed that it is a "carrier of persons" as that term is used in Section 1(a) and defined in Section 2(a) and (b).

The loss in revenues to be incurred by Transit as a consequence of such duplication of its service has been estimated at over a million dollars annually. (Transit Ex. 2, pp. 2-3.)

C. Universal and Not the Secretary Will Perform the Contemplated Transportation Operation.

Universal contends on pages 20-21 that the operation in issue will in effect be an activity of the Federal Government which is exempt from the Commission's jurisdiction under Section 1(a)(2) of Article XII of the Compact.[14] Universal argues that if the Government can provide the Mall service directly and be exempt from regulation, it can provide such service indirectly through a concessioner and the Section 1(a)(2) exemption will still be applicable.

Universal's argument ignores the clear language of the Compact which establishes an exemption for transportation "by" the Federal Government. The very use of the word "by" instead of the word "for" indicates that only operations actually performed by the Government itself are to be exempted from regulation.

Assuming *arguendo* that pursuant to an agency relationship a third party can perform a transportation operation for the Government and be exempted from the Commission's regulation, the contract between Universal and the Secretary negates any such relationship. The contract requires Universal to:

1. Supply all the necessary capital and assume all the risk of operating loss (5th whereas clause—Pet. App. 22);
2. Supply all personnel and equipment necessary for the proposed operation (Section 3(a) – Pet. App. 26);
3. Pay to the Government an annual franchise fee of $1,320.00 (Section 9(a)(1) – Pet. App. 32);

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[14] This section specifically excepts from the Commission's jurisdiction "transportation by the Federal Government".

4. Pay to the Government 3% of its gross receipts from the preceding year (Section 9(a)(2) – Pet. App. 32);
5. Supply employees coming in direct contact with the public a uniform by which they may be "known and distinguished" as Universal's employees (Section 17(a) – Pet. App. 39).

These requirements have made Universal nothing more than a "concessioner" whose acts are not legally attributable to the Government.

The two cases cited by Universal, *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187 (1956), and *Yearsley v. W. A. Ross Construction Co.*, 309 U.S. 18 (1940), have no relevancy to this proceeding. Both involved "contractors" who were paid to render certain construction services for the Government; they were not required to pay a franchise fee or to assume the operating risks of a profit-seeking venture.

The correct relationship between the Secretary and Universal is described in *United States v. Gray Line Water Tours of Charleston*, 311 F.2d 799 (4th Cir. 1962), a case in which the Secretary granted a concession to a water carrier to transport visitors to Fort Sumter, a national monument not accessible by land. As noted by the Court on Page 781:

> . . . neither the necessary investment, nor the assumption of the obligations, for such a service would be forthcoming from private sources without some substantial proof of the probable success of the venture. The inducement the Government tendered to an entrepreneur took the form of a preference in the use of the pier.[15]

In view of the foregoing, it is clear that the proposed transportation service will be performed by Universal, not the Federal Government, and the exemption in Section 1(a)(2) of Article XII is not applicable.

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[15] Under Section 15(a) of its contract with the Secretary Universal is granted a similar preference. See Pet. App. 37.

II

The Secretary of Interior Has No Statutory Authority To Perform a For-hire Transportation Operation in the District of Columbia.

Universal's argument that the for-hire transportation involved herein is "transportation by the Federal Government" assumes the existence of statutory authority for the Secretary, through the Service, to perform such transportation. It is submitted that no such authority exists in the Act of 1916 establishing the Service or the subsequent enactments administered by the Service.

With one limited exception, none of the statutes cited by Universal, codified at 16 U.S.C. secs. 1-3, 17b, and 20a-g, authorizes the Service itself to separate any for-hire transportation services.[16] The Act of August 8, 1953, 67 Stat. 495, 16 U.S.C. sec. 1b, authorized the Secretary to operate a for-hire motor carrier service for his employees at the Carlsbad Caverns National Park in New Mexico. The legislative history of such Act indicates that prior thereto the Service had no authority to perform for-hire transportation operations even for its own employees.[17] Universal has pointed

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[16]To the contrary, the Act of October 9, 1965, 79 Stat. 969, 16 U.S.C. sec. 20a, specifically provides that the Secretary "shall take such action as may be appropriate to encourage and enable private persons and corporations (hereinafter referred to as 'concessioners') to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service". This provision would seem to make it clear that Congress intends for private persons and not the Federal Government to provide the services in dispute herein.

[17]In a letter of July 24, 1953, to the Chairman of the Senate Committee on Interior and Insular Affairs, the Interior Department made the following statement in its legislative comments on H.R. 1524, the bill enacted on August 8, 1953:

> This proposed legislation is designed to provide essential housekeeping authority that is needed to manage efficiently the national park system. The provisions of this bill are lim-

to no subsequent enactment, and Transit has found none, by which the Service has been given any additional authority to perform for-hire transportation operations for either employees or visitors.

It is also noteworthy that the Act of August 8, 1953, specifically prohibited the Secretary from performing for-hire transportation services "if adequate transportation facilities are available . . . by any common carrier at reasonable rates . . . .". This congressional directive that the Secretary keep out of the transportation business as long as adequate service is available from private sources has also been reflected in executive directives.

The Presidential Memorandum of March 3, 1966, and the accompanying Budget Bureau Circular No. A-76, reproduced as Appendix "D" hereto, established guidelines to determine when the Government should provide products and services for its own use. As noted in paragraph number 2 of the Circular, these guidelines are "in furtherance of the Government's general policy of relying on the private enterprise system to supply its needs". Except for the six instances specified under paragraph number 5, not applicable herein, executive departments are proscribed from operating and managing a "commercial or industrial activity" that is obtainable from a private source. Accordingly, the Secretary would be acting in violation of this executive directive if he were deemed to be the real operator of the proposed Mall service.

In the final analysis, the Secretary has no authority, legislative or executive, to perform the for-hire transportation operations under review.

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ited to those matters that are important in the management of that system and are founded upon many years of experience in that field . . . *It is important that our administrative authority in this field keep pace with our responsibilities.* [Emphasis added] 1953 U.S. Code Cong. and Adm. News, pp. 2241-42.

III

The Congressional Franchise Granted to Transit Protects It Against the For-hire Transportation Opertion Which Universal Proposes To Perform in the District.

Universal has only briefly touched upon the applicability to this proceeding of Transit's Franchise, Act of July 24, 1956, 70 Stat. 598. Universal contends that the protective provisions of Section 3 of the Franchise are not applicable because the proposed service will not be operated "over a given route on a fixed schedule".[18] As support for such contention, Universal points to the Secretary's right under the contract to change routes and schedules.

As a practical matter, under ICC, PUC, and Commission procedures, motor carrier routes and schedules are always subject to change, generally initiated by the carriers and approved by the commissions. Otherwise, carriers would be unable to meet the changing needs of the public. This does not mean, however, that a route is not "given" or a schedule not "fixed" during the period it remains operative. Stated differently, once approval is granted to a change in a route or schedule, the changed route is "given" and the changed schedule is "fixed".

Obviously a determination of the "given" character of a route or the "fixed" character of a schedule is dependent upon the extent to which they are established or known in advance. In this connection, Universal's route will be "essentially the same" as the six-week experimental operation

[18] Section 3 of the Franchise provides:

> No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established to operate in the District of Columbia without the prior issuance of a certificate by the Public Utilities Commission of the District of Columbia (referred to in this part as the "Commission") to the effect that the competitive line is necessary for the convenience of the public.

performed by the Service itself and shown on Gov't. Ex. 3. Its schedule, under Sections 1(b) and 6(a)(2) of the contract (Pet. App. 23 and 29), will consist of a minimum of three trips per hour within the first four months of operation and twelve trips per hour within one year of operation. It is submitted that such route and schedule are so substantially established as to bring Universal's proposed operation within the protective provisions of Section 3 of the Franchise.

Accordingly, Universal's proposed operation requires certification under the Franchise irrespective of any similar requirement under the Compact.

IV

The Petition Does Not Establish Any Grounds for the Issuance of a Writ of Certiorari.

The first reason Universal has given to warrant a grant of its petition is, in essence, that the decision of the Court of Appeals will enable a "local agency" to exercise a "veto" over a determination of a cabinet officer concerning the use of Federal property under his "exclusive jurisdiction". Such is not the case, however.

This Commission is much more than a "local agency". It is an agency whose creation required an Act of Congress suspending certain Federal laws and vesting it with Federal regulatory functions previously delegated to and exercised by the ICC. It is an agency whose decisions are reviewable by Federal courts. Finally, the Commission is an agency whose very establishment can be altered or repealed by the Congress.[19] These certainly are not characteristics of a "local agency".

The Commission will not exercise a "veto" power over the Secretary. To require a "concessioner" of the Secretary

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[19] Act of September 15, 1960, 74 Stat. 1050-1, D. C. Code §§ 1-1412, 1415, 1416.

to obtain a certificate from the Commission is not tantamount to requiring the Secretary to obtain the Commission's approval of plans for the administration and development of a national park area in the Metropolitan District. The Secretary and only the Secretary will decide generally how such park areas should be managed. In particular, insofar as transportation operations are concerned, the Secretary and only the Secretary will decide whether all for-hire motor carriers of passengers should be allowed to enter such areas or whether all such carriers should be excluded from such areas. In this connection, the Secretary and only the Secretary will pick a "concessioner" to be given preferential operating rights. He may pick a carrier from the many already certificated by the Commission or he may pick a carrier that will have to seek such certification. If he picks the latter carrier, he would not seem to be voluntarily subjecting himself to any more of a veto than he now does by requiring the equipment furnished by such carrier to meet all the safety requirements of the ICC. (Contract, Sections 1(b) and 6(a) – Pet. App. 23, 29.)

As a practical matter, it is only reasonable to expect that two agencies exercising concurrent jurisdiction will establish a working relationship pervaded by a spirit of cooperation. It simply is in their own best interests to do so; for in the sense that the Commission can refuse to certificate a "concessioner" of the Secretary, the Secretary can refuse to allow a carrier certificated by the Commission to operate on parkland in the District. One such refusal is as much a veto as the other.[20]

It would seem clear, therefore, that the Commission and the Secretary will give most careful and sympathetic consid-

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[20] In *United States v. Washington, Virginia & Maryland Coach Co.*, 268 F. Supp. 34 (D.C.D.C. 1967), the Secretary refused to allow a carrier certified by the Commission to use the George Washington Memorial Parkway to provide commuter service to adjacent communities in Virginia. The Secretary did not consider such refusal a veto over or frustration of the Commission's administration of the Compact.

eration to each other's determination of a public need. To the extent such consideration results in a denial, deemed to be dictated by other, overriding considerations, judicial review is readily available to assure the reasonableness thereof.

Respecting the Secretary's alleged "exclusive jurisdiction" over national parks, it is submitted that the many prior references hereinabove to the exercise of regulatory jurisdiction over national parks by the ICC and PUC have fully refuted such contention.

In the final analysis, then, the decision of the Court of Appeals, contrary to the characterization thereof suggested by Universal, merely enables a Commission established by Act of Congress to exercise authority, previously exercised by other congressionally-established regulatory bodies, over parklands in conjunction and consistent with the administration of such lands by an executive agency. Viewed in this proper perspective, it would not seem that the decision of the Court of Appeals presents a "special and important" reason for granting Universal's petition, as required by Rule 19 of the Rules of this Court, 28 U.S.C.

The second reason advanced by Universal for granting its petition is that the decision of the Court of Appeals has "far-reaching negative implications" upon the development of the Mall, a unique area of national interest. It is difficult to understand how such decision has such implications; for as just noted, the Secretary can independently make and execute any plan he deems desirable for the development of the Mall. The only thing he cannot do is to engage the services of a for-hire motor carrier of passengers who has not been certificated by the Commission. Such requirement certainly does not negate the Secretary's plans for the Mall.

While it is true that the Mall area is unique to the nation, it would seem that the Congress fully appreciated such fact in authorizing the Commission to regulate for-hire transportation operations performed thereon. The Congress specifically declared in the Preamble to the Compact (D.C. Code § 1-1410);

> Whereas said compact adequately protects the *national* interest in mass transit service in the metropolitan area of the Nation's Capital and properly accommodates the *National* and State interests in and obligations toward mass transit in the metropolitan area . . . (Italics added.)[21]

Under the circumstances, again contrary to Universal's characterization thereof, the decision of the Court of Appeals merely enables a congressionally-established commission, charged with improving transit service in the entire Metropolitan District, to discharge such function in an area of the Metropolitan District where transit service is particularly necessary for the accommodation of millions of visitors. Again, viewed in this proper perspective, the decision of the the Court of Appeals presents no "special and important" reason for granting Universal's petition.

V

The Position of the United States Is Not Well-founded.

In essence, the Government's Memorandum contends that a local agency, administering a purely municipal law designed to foster commuter service within the Metropolitan District, has no authority over national park areas which have always been under the exclusive jurisdiction of the Service. The Government thus pictures an irreconcilable conflict between local and national laws as well as local and national interests, with the former negating the latter. To the extent that such contention merely restates the arguments contained in Universal's petition that have already been covered herein, further discussion is unnecessary. However, it would seem de-

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[21] This language would seem to refute fully the statement on Page 7 of the Government's Memorandum that the Congress has maintained a basic dichotomy between municipal and national affairs in legislating with respect to the District of Columbia.

sirable to comment on a few statements made in the Government's Memorandum for purposes of clarification.

First, the Government on page 2 cites a proviso in the D. C. Traffic Act of 1925, 43 Stat. 1119, 1126, D. C. Code § 40-613, as support for its contention that the Congress in approving the Compact did not limit the Service's exclusive charge and control over park areas in the Capital. Quite the contrary, the Congress in enacting the Compact preserved, among others, an existing limitation on the Service's charge and control thereover established by Act of February 27, 1931. This matter is best illustrated by reference to the following chronology:

In the Traffic Act of 1925, Congress provided for the regulation of motor vehicle traffic in the District of Columbia by a Director of Traffic. Incorporated into the scheme of regulation was a proviso to protect the jurisdiction of the Chief of Engineers, later transferred to the Service, over any such traffic in park areas.[22] In the Act of February 27, 1931, 46 Stat. 1424, 1426, D. C. Code § 40-603(e), the Congress established the PUC to regulate bus operations in the District. By not updating the proviso in the Act of 1925 so as to exclude park areas from the PUC's jurisdiction, the Congress limited the previously exclusive jurisdiction of the Chief of Engineers over such park areas. Recognition of such fact is readily found in D. C. Code § 40-613 wherein the "heretofore committed" language of the proviso in the Act of 1925 has been codified as "prior to March 3, 1925, committed".

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[22] This proviso read as follows:

> Nothing contained in this Act shall be construed to interfere with the exclusive charge and control heretofore committed to the Chief of Engineers over the park system of the District, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control. * * * (D. C. Code § 40-613)

In short after the Act of 1931 the Chief of Engineers, and later the Service, had exclusive charge and control over park areas in the District insofar as the jurisdiction of the Director of Traffic was concerned but not insofar as the jurisdiction of the PUC was concerned. With the enactment of the Compact the Congress clearly transferred the PUC's jurisdiction over park areas to the Commission.

In this connection, in footnote 5 on page 9, the Government refers to the provision in Section 3 of the consent legislation preserving the "police powers" of the Director of the Service and suggests that such term "necessarily includes the full scope of the existing authority" of the Secretary, through the Service, over national parks. Assuming *arguendo* that such inclusion was intended, the Government has nicely proved what was just stated above – that the limitation on the Secretary's exclusive authority over park lands existing after 1931 was incorporated into the Compact.

Finally, on pages 1 and 10 the Government contends that Congress never intended to give the Commission jurisdiction over the operations proposed by Universal which are "wholly extraneous" and "bear no relation" to its primary function under the Compact. In other words, the suggestion here is that a sightseeing service to be offered out-of-state and foreign visitors coming to the capital of the United States has no real effect on the Commission's responsibility to improve transit service and alleviate traffic congestion in the entire Metropolitan District. It would seem perfectly obvious that any for-hire transportation service, whether or not sightseeing in nature, which is operated daily in the very heartland of the Metropolitan District and which involves the movement of millions of passengers annually is inseparably related to the general transit and traffic problems of such District.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

Manuel J. Davis
Samuel M. Langerman
Attorneys for Respondent
D.C. Transit System, Inc.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WASHINGTON METROPOLITAN
AREA TRANSIT COMMISSION,
Plaintiff,

v.

Civil Action
No. 793-67

UNIVERSAL INTERPRETIVE
SHUTTLE CORPORATION,
Defendant.

AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Washington)
District of Columbia) ss:

Jay S. Stein, first having been duly sworn, deposes and says:

I am a duly elected vice president of Universal Interpretive Shuttle Corporation, the defendant in the above-styled action.

Universal Interpretive Shuttle Corporation is a California corporation. Universal Interpretive Shuttle Corporation was organized in 1967 to operate a visitors interpretive shuttle service in the Mall area administered by the National Park Service of the Department of the Interior in Washington, D.C. On March 24, 1967, our corporation entered into a contract for the provision of such service with the United States of America acting in this behalf by the Secretary of the Interior through the Director of the National Park Service. A copy of said contract is attached hereto and incorporated herein as Exhibit A. The above-mentioned contract requires our corporation to provide a comprehensive and inspirational visitor interpretive shuttle service on a year round basis (except Christmas Day). The route will be essentially the same as that used by the National Park Service during

their six week experiment in 1966.[1] Tourists utilizing this service will be carried in articulated trams of special design.[2] The contract requires that a guide, thoroughly conversant with the evolution of the Federal City and the workings of our government, accompany each unit of the tram. A narration approved by the National Park Service will be delivered by such guides enroute continuously throughout the tour. In addition, tour guides will be stationed at 11 points of interest along the Mall. Both the stationary guides and the guides on mobile equipment are required to wear uniforms prescribed by the National Park Service and to be thoroughly conversant with the geography and history of the Nation's Capitol.

The contract also requires that the stationary guides must be prepared to furnish information about the city and its facilities to any person regardless of whether they have paid for the visitors interpretive shuttle service or not. The contract requires that initial service be furnished at these 11 points of interest:

1. Washington Monument.
2. Bureau of Engraving and Printing.
3. Jefferson Memorial.
4. Lincoln Memorial.
5. Pan American Union, American Red Cross, Interior Department, Daughters of the American Revolution.
6. White House, United States Treasury.
7. Museum of Arts & Industries, Army Medical Museum, Federal Aviation Agency, National Aeronautics and Space Administration.
8. Library of Congress, Supreme Court, U.S. Capitol.
9. National Gallery of Art.

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[1] A map of the route is attached as Exhibit B.

[2] An illustration of the tram is attached as Exhibit C.

10. National History Museum, Federal Bureau of Investigation, National Archives.
11. Museum of History & Technology, Post Office Department.

The contract requires our corporation to conduct both a round-trip interpretive tour service and also an interpretive shuttle service. An all-day ticket will also be available. The official Prospectus on the visitors interpretive shuttle service, issued by the National Capitol Region, National Park Service, specifies that the initial route shall be conducted exclusively on suface streets and roadways lying wholly within the Mall area of the National Park Service and under the exclusive charge and control of the Director of the National Park Service. Prior to entering into the aforementioned contract our corporation was specifically informed that in the opinion of the Department of the Interior the interpretive shuttle service required by the contract would be subject only to the requirements imposed by the United States of America acting in this behalf by the Secretary of the Interior by the Director of the National Park Service.

The contract provides for a comprehensive scheme of regulation of the activities of our corporation by the Secretary of the Interior. Under the terms of the contract the Secretary of the Interior controls both the type and number of mobile units to be utilized, the personnel policy, rates, routes, hours of service, schedule of trips, content of narration and prescribes the uniforms to be worn by guides and drivers. Under the contract the Secretary assigns government land and government improvements to our corporation for use in connection with operations. The Secretary prescribes the manner in which the accounting records of our corporation shall be maintained. Both the Secretary of the Interior and the Comptroller General of the United States have access to and the right to examine any of the pertinent books, documents and records of our corporation. The contract also requires that our corporation carry insurance in amounts approved by the Secretary

against losses by fire, public liability, employee liability and other hazards. The contract requires that the United States must be named as co-insured in all liability policies carried by our corporation. The contract also requires that our corporation furnish such bonds for performance as the Secretary may, in his discretion, require. The contract also requires that the United States of America shall have at all times the first lien on all assets of our corporation utilized in the visitors interpretive shuttle service.

Our corporation entered into the abovementioned contract with express knowledge that every phase of the operation of the visitors interpretive shuttle service would be subject to close and continuous controls by the Director of the National Park Service and the Secretary of the Interior.

As of this date our corporation has been required to commit a total of approximately $289,000 in order to fulfil the requirements of the contract. This sum includes orders for five trams necessary to commence service (a minimum of 12 trams will be required by the contract to be in operation as of May 31, 1968). The amount committed to date also includes charges for consulting services, executive payroll, legal and accounting fees and travel expenses. The contract requires our corporation to commence the visitors interpretive shuttle service by May 1, 1967. In order to commence service by that date our corporation must commence the recruitment and training of operating personnel no later than April 10, 1967. In order to commence service by May 1, 1967, our projection shows that our corporation must commit an additional investment of approximately $400,000 in order to satisfy the terms of the contract.

If plaintiff's Motion for Preliminary Injunction is granted by the Court grievous harm to the public interest and severe and continuing tangible and intangible injury to our corporation will result.

We are now approaching the commencement of the major tourist season for the year 1967. The Director of the

National Park Service has informed us that during 1966 more than 12 million visitors from every state in the Union and virtually every nation in the world visited the Central Mall area. Projections furnished to us by Economic Research Associates estimate that approximately 15 million visitors will come to the Central Mall area in 1967. The Secretary of the Interior has determined that the needs and desires of these millions of visitors to the unique points of historical, esthetic and patriotic interest can best be served by the provision of an interpretive shuttle service. The narrations to be delivered by the guides will be approved in advance by the Secretary of the Interior and will be designed for the sole purpose of informing United States citizens and the citizens of other nations, of the true value and importance of the monuments and buildings which enshrine our national heritage. If the operation of this service is enjoined millions of visitors will suffer an intangible but very real loss. Some undetermined but substantial number of these visitors will be making the only trip of their lives to the Nation's Capitol in 1967. The loss of the tour service to such visitors is irreparable.

Contrary to the allegations contained in paragraph 8 of the Affidavit of George A. Avery in Support of Plaintiff's Motion for Preliminary Injunction, the public will not be denied protection against unsafe operations, unfair, unreasonable and unregulated fares and charges and financial responsibility for bodily injury and for death or for loss or damage. As clearly demonstrated by the contract between our corporation and the United States of America, attached hereto, the Secretary of the Interior has imposed stringent and comprehensive regulations to protect the public against all of the dangers listed by Mr. Avery. Our corporation has complied in every detail with every requirement prescribed by the Secretary of the Interior for the protection of the public. Our corporation has every present intention of continuing to comply with all such regulations during the entire term of the contract.

In addition to the grievous harm to the public interest that would ensue if plaintiff's Motion were granted, our corporation would suffer irreparable injury, both tangible and intangible, by the issuance of a preliminary injunction. Our contract with the United States of America requires that we commence operations on May 1, 1967. In order to commence operations by that date we must begin the recruitment of personnel no later than April 10, 1967. We must commit an initial investment of more than $700,000 by that date. Our investment would be impaired by the issuance of an injunction. In addition, our corporation is seriously concerned about the possibility of impairment of employee morale and the defection of employees who may be recruited and trained but who must remain idle if an injunction issues.

A speedy resolution of this matter is imperative to our corporation. If an injunction should issue after the commencement of operations we project an operating loss of more than $10,000 per week in the first week operations cease and fixed charges of more than $5,000 per week thereafter.

/s/ Jay S. Stein

[Notarial Certification, dated April 1, 1967.]

APPENDIX B

UNITED STATES
DEPARTMENT OF THE INTERIOR

News Release

Kelly – 343-4214

OFFICE OF THE SECRETARY

For Release March 26, 1967

CALIFORNIA FIRM SELECTED TO OPERATE MALL VISITOR SERVICE IN DISTRICT

Secretary of the Interior Stewart L. Udall today announced that Universal Interpretive Shuttle Corporation, (UISC), of Universal City, California, has been selected to operate the Mall Visitor Interpretive Shuttle Service in the District of Columbia, beginning about May 1. Proposals were received from seven firms.

The one-hour tour, to be conducted on 83-passenger open-air tourmobiles, will travel along the same route followed during the six-week experimental service operated last fall by the National Park Service.

The route will be along the Mall and around the Tidal Basin; with stops at the Washington Monument, Bureau of Engraving and Printing, Jefferson Memorial, Lincoln Memorial, Pan American Building, White House, Smithsonian Institution, The Capitol, National Gallery of Art, Natural History Museum, and the Museum of History and Technology.

Secretary Udall emphasized that the new service is intended to interpret the Mall area for the steadily increasing number of people coming to Washington who are visiting national shrines and areas which are chiefly maintained by the National Park Service. It is not aimed at furnishing a mode of transportation which would compete with entities engaged in the transportation of residents of the Washington area, he stressed.

UISC will begin its service with two vehicles beginning about May 1, and within six months plans to operate four

additional tourmobiles, with a total of approximately 12 to be in operation before the end of the year. The tourmobiles consist of a specially designed articulating unit and a trailer, coupled together to provide passenger access through both units. The tourmobiles will be covered but open-sided. Entry and exit are at both ends.

Service will be offered daily including Sundays and holidays until Labor Day from 9 a.m. to 10 p.m. at 30-minute intervals. From Labor Day through April 15 the hours will be 9:30 a.m. to 5:00 p.m. No service will be offered on Christmas Day.

Fares for the one-hour tour at the beginning of the season will be on a zone basis, with three zones to be established. The charge will be 25 cents per zone, or 75 cents for a round trip. Tickets will be sold at 25 cents each or four for 75 cents.

UISC plans to initiate, by November 1 an all-day ticket to sell for $1 which will permit Mall visitors to board the tourmobile at any stop along the route as many times during the day as desired. All-day tickets for children under 12, will be 75 cents. Beginning next summer a non-stop, uninterrupted tour of the Mall will be offered for 75 cents, on a year-round basis.

Each tourmobile, in addition to the deriver, will have an interpreter pointing out the areas of interest. The contractor will also provide personnel at each stop to answer questions and give information on the service and the City.

UISC, a subsidiary of Universal City Studios, Inc., has been operating tours of Universal City Studios in Los Angeles since 1964. During the initial operation here UISC will use tour trams now in use in California. These will be replaced with tourmobiles designed to meet National Park Service requirements.

Under terms of the 10-year contract, UISC will pay 3% of its gross revenue to the Department of the Interior.

APPENDIX C

PUBLIC UTILITIES COMMISSION OF
THE DISTRICT OF COLUMBIA

Order No. 1623.

August 5, 1937.

IN THE MATTER OF

An investigation of the transportation requirements of the District of Columbia for all street railway and bus service and facilities of the CAPITAL TRANSIT COMPANY to determine route changes, extensions of service, abandonments, physical changes in facilities, locations of stops, safety zones, and loading platforms, and such other matters as may be pertinent in order that proper and adequate service may be provided by said company within the District of Columbia.

P.U.C. No. 3085/178.

Part 2.

Abandonment and construction of tracks in the vicinity of Four and One-Half Streets.

AMENDING ORDER NO. 1248 AND CANCELLING ORDER NO. 1355.

IT IS ORDERED:

Section 1. That section (5) of Order No. 1248, as amended by Order No. 1355, be and it is further amended to read as follows:

(5) That the Capital Transit Company be and it is authorized and directed to operate buses over the following route:

From terminal on the south side of P Street, Southwest, east on P Street to 4th Street, north on 4th Street to Washington Drive, west on said drive to

9th Street, north on 9th Street to Pennsylvania Avenue, east on Pennsylvania Avenue to terminal east of 7th Street; from said terminal, east on Pennsylvania Avenue to 4th Street, south on 4th Street to O Street, west on O Street to Water Street, south on Water Street to P Street, east on P Street to terminal.

Section 2.. That terminals be established at the following locations:

South side of P Street, Southwest, beginning 32 ft. west of west curb line of 4th Street and extending west 90 ft.

South side of Pennsylvania Avenue, Northwest, beginning 30 ft. east of east curb line of 7th Street and extending east 60 ft.

Section 3. That Order No. 1355 be canceled.

Section 4. That this order take effect Sunday, August 15, 1937.

A TRUE COPY:
/s/ James L. Martin
Executive Secretary.

By the Commission
JAMES L. MARTIN,
Executive Secretary.

August 10, 1937.

In accordance with the provisions of the Act of Congress approved February 27, 1931, this order has been referred to the Joint Board created by the said Act and has been adopted by said Joint Board.

DAN I. SULTAN
Chairman of the Joint Board.

APPENDIX D

For Immediate Release March 3, 1966

Office of the White House Press Secretary

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THE WHITE HOUSE

MEMORANDUM FROM THE PRESIDENT TO HEADS OF DEPARTMENTS AND AGENCIES

Each of you is aware of my determination that this Administration achieve maximum effectiveness in the conduct of day-to-day operations of the Government.

We must seek in every feasible way to reduce the cost of carrying our governmental programs. But we must remember that our budgetary costs — our current out-of-pocket expenditures — do not always provide a true measure of the cost of Government activities. This is often true when the Government undertakes to provide for itself a product or a service which is obtainable from commercial sources.

At the same time, it is desirable, or even necessary, in some instances for the Government to produce directly certain products or services for its own use. This action may be dictated by program requirements, or by lack of an acceptable commercial source, or because significant dollar savings may result.

Decisions which involve the question of whether the Government provides directly products or services for its own use must be exercised under uniform guidelines and principles. This is necessary in order —

- to conduct the affairs of the Government on an orderly basis;
- to limit budgetary costs; and
- to maintain the Government's policy of reliance upon private enterprise.

At my direction the Director of the Bureau of the Budget is issuing detailed guidelines to determine when the Government should provide products and services for its own use. These guidelines are the result of long study based on experience over the past six years since the current guidelines were issued.

Each of you is requested to designate an assistant secretary or other official of comparable rank to –

- review new proposals for the agency to provide its own supplies or services before they are included in the agency's budget;
- review experience under the new guidelines; and
- suggest any significant changes to the guidelines which experience may indicate to be desirable.

I do not wish to impose rigid or burdensome reporting requirements on each agency with respect to the new guidelines. However these guidelines will require that appropriate records be maintained relative to agency commercial or industrial activities. I am also requesting the Budget Director to report to me from time to time on how the new directives are being carried out, and whether experience suggests changes in the guidelines or in agency reporting requirements.

/s/ Lyndon B. Johnson

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EXECUTIVE OFFICE OF THE PRESIDENT
Bureau of the Budget
Washington, D.C. 20503

March 3, 1966

CIRCULAR
No. A-76

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Policies for acquiring commercial or industrial products and services for Government use.

1. *Purpose.* This Circular replaces the statement of policy which was set forth in Bureau of the Budget Bulletin No. 60-2 dated September 21, 1959. It restates the guidelines and procedures to be applied by executive agencies in determining whether commercial and industrial products and services used by the Government are to be provided by private suppliers or by the Government itself. It is issued pursuant to the President's memorandum of March 3, 1966, to the heads of departments and agencies.

2. *Policy.* The guidelines in this Circular are in furtherance of the Government's general policy of relying on the private enterprise system to supply its needs.

In some instances, however, it is in the national interest for the Government to provide directly the products and services it uses. These circumstances are set forth in paragraph 5 of this Circular.

No executive agency will initiate a "new start" or continue the operation of an existing "Government commercial or industrial activity" except as specifically required by law or as provided in this Circular.

3. *Definitions.* For purposes of this Circular:

a. *A "new start"* is a newly established Government commercial or industrial activity or a reactivation, expansion, modernization or replacement of such an activity involving additional capital investment of $25,000 or more or additional annual costs of production of $50,000 or more.

Consolidation of two or more activities without increasing the overall total amount of products or services provided is not a "new start."

b. *A Government commercial or industrial activity* is one which is operated and managed by an executive agency and which provides for the Government's own use a product or service that is obtainable from a private source.

c. *A private commercial source* is a private business concern which provides a commercial or industrial product or service required by agencies and which is located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico.

4. *Scope.* This Circular is applicable to commercial and industrial products and services used by executive agencies, except that it

a. Will not be used as authority to enter into contracts if such authority does not otherwise exist nor will it be used to justify departure from any law or regulation, including regulations of the Civil Service Commission or other appropriate authority, nor will it be used for the purpose of avoiding established salary or personnel limitations.

b. Does not alter the existing requirement that executive agencies will perform for themselves those basic functions of management which they must perform in order to retain essential control over the conduct of their programs. These functions include selection and direction of Government employees, assignment of organizational responsibilities, planning of programs, establishment of performance goals and priorities, and evaluation of performance.

c. Does not apply to professional staff and managerial advisory services such as those normally provided by an office of general counsel, a management and organization staff, or a systems analysis unit. Advisory assistance in areas such as these may be provided either by Government staff organizations or from private sources as deemed appropriate by executive agencies.

d. Does not apply to products or services which are provided to the public. (But an executive agency which provides a product or service to the public should apply the provisions of this Circular with respect to any commercial or industrial products or services which it uses.)

e. Does not apply to products or services obtained from other Federal agencies which are authorized or required by law to furnish them.

f. Should not be applied when its application would be inconsistent with the terms of any treaty or international agreement.

5. *Circumstances under which the Government may provide a commercial or industrial product or service for its own use.* A Government commercial or industrial activity may be authorized only under one or more of the following conditions:

a. *Procurement of a product or service from a commercial source would disrupt or materially delay an agency's program.* The fact that a commercial or industrial activity is classified or is related to an agency's basic program is not an adequate reason for starting or continuing a Government activity, but a Government agency may provide a product or service for its own use if a review conducted and documented as provided in paragraph 7 establishes that reliance upon a commercial source will disrupt or materially delay the successful accomplishment of its program.

b. *It is necessary for the Government to conduct a commercial or industrial activity for purposes of combat support or for individual and unit retraining of military personnel or to maintain or strengthen mobilization readiness.*

c. *A satisfactory commercial source is not available and cannot be developed in time to provide a product or service when it is needed.* Agencies' efforts to find satisfactory commercial sources should be supplemented as appropriate by obtaining assistance from the General Services and Small Business Administrations or the Business and Defense Serv-

ices Administration. Urgency of a requirement is not an adequate reason for starting or continuing a Government commercial or industrial activity unless there is evidence that commercial sources are not able and the Government is able to provide a product or service when needed.

d. *The product or service is available from another Federal agency.* Excess property available from other Federal agencies should be used in preference to new procurement as provided by the Federal Property and Administrative Services Act of 1949, and related regulations.

Property which has not been reported excess also may be provided by other Federal agencies and unused plant and production capacity of other agencies may be utilized. In such instances, the agency supplying a product or service to another agency is responsible for compliance with this Circular. The fact that a product or service is being provided to another agency does not by itself justify a Government commercial or industrial activity.

e. *Procurement of the product or service from a commercial source will result in higher cost to the Government.* A Government commercial activity may be authorized if a comparative cost analysis prepared as provided in this Circular indicates that the Government can provide or is providing a product or service at a cost lower than if the product or service were obtained from commercial sources.

However, disadvantages of starting or continuing Government activities must be carefully weighed. Government ownership and operation of facilities usually involve removal or withholding of property from tax rolls, reduction of revenues from income and other taxes, and diversion of management attention from the Government's primary program objectives. Losses also may occur due to such factors as obsolescence of plant and equipment and unanticipated reductions in the Government's requirements for a product or service. Government commercial activities should not be started or continued for reasons involving com-

parative costs unless savings are sufficient to justify the assumption of these and similar risks and uncertainties.

6. *Cost comparisons.* A decision to rely upon a Government activity for reasons involving relative costs must be supported by a comparative cost analysis which will disclose as accurately as possible the difference between the costs which the Government is incurring or will incur under each alternative.

Commercial sources should be relied upon without incurring the delay and expense of conducting cost comparison studies for products or services estimated to cost the Government less than $50,000 per year. However, if there is reason to believe that inadequate competition or other factors are causing commercial prices to be unreasonable, a cost comparison study will be directed by the agency head or by his designee even if it is estimated that the Government will spend less than $50,000 per year for the product or service. A Government activity should not be authorized on the basis of such a comparison study, however, unless reasonable efforts to obtain satisfactory prices from existing commercial sources or to develop other commercial sources are unsuccessful.

Cost comparison studies also should be made before deciding to rely upon a commercial source when terms of contracts will cause the Government to finance directly or indirectly more than $50,000 for costs of facilities and equipment to be constructed to Government specifications.

a. *Costs of obtaining products or services from commercial sources* should include amounts paid directly to suppliers, transportation charges, and expenses of preparing bid invitations, evaluating bids, and negotiating, awarding, and managing contracts. Costs of materials furnished by the Government to contractors, appropriate charges for Government owned equipment and facilities used by contractors and costs due to incentive or premium provisions in contracts also should be included. If discontinuance of a Government commercial or industrial activity will cause a facility being retained by the Government for mobilization or

other reasons to be placed in a standby status, the costs of preparing and maintaining the facility as standby also should be included. Costs of obtaining products or services from commercial sources should be documented and organized for comparison with costs of obtaining the product or service from a Government activity.

b. *Costs of obtaining products or services from Government activities* should include all costs which would be incurred if a product or service were provided by the Government and which would not be incurred if the product or service were obtained from a commercial souce. Under this general principle, the following costs should be included, considering the circumtances of each case:

(1) *Personal services and benefits.* Include costs of all elements of compensation and allowances for both military and civilian personnel, including costs of retirement for uniformed personnel, contributions to civilian retirement funds, (or for Social Security taxes where applicable), employees' insurance, health, and medical plans, (including services available from Government military or civilian medical facilities), living allowances, uniforms, leave, termination and separation allowances, travel and moving expenses, and claims paid through the Bureau of Employees' Compensation.

(2) *Materials, supplies, and utilities services.* Include costs of supplies and materials used in providing a product or service and costs of transportation, storage, handling, custody, and protection of property, and costs of electric power, gas, water, and communications services.

(3) *Maintenance and repair.* Include costs of maintaining and repairing structures and equipment which are used in providing a product or service.

(4) *Damage or loss of property.* Include costs of uninsured losses due to fire or other hazard, costs of insurance premiums and costs of settling loss and damage claims.

(5) *Federal taxes.* Include income and other Federal tax revenues (except Social Security taxes) received from corporations or other business entitites (but not from individual stockholders) if a product or service is obtained through commercial channels. Estimates of corporate incomes for these purposes should be based upon the earnings experience of the industry, if available, but if such data are not available, *The Quarterly Financial Report of Manufacturing Corporations*, published by the Federal Trade Commission and the Securities and Exchange Commission may be consulted. Assistance of the appropriate Government regulatory agencies may be obtained in estimating taxes for regulated industries.

(6) *Depreciation.* Compute depreciation as a cost for any new or additional facilities or equipment which will be required if a Government activity is started or continued. Depreciation will not be allocated for facilities and equipment acquired by the Government before the cost comparison study is started. However, if reliance upon a commercial source will cause Government owned equipment or facilities to become available for other Federal use or for disposal as surplus, the cost comparison analysis should include as a cost of the Government activity, an appropriate amount based upon the estimated current market value of such equipment or facilities. The Internal Revenue Service publication, *Depreciation; Guidelines and Rules* may be used in computing depreciation. However, rates contained in this publication are maximums to be used only for reference purposes and only when more specific depreciation data are not available. Accelerated depreciation rates permitted in some instances by the Internal Revenue Service will not be used.

(7) *Interest.* Compute interest for any new or additional capital to be invested based upon the current rate for long-term Treasury obligations for capital items having a useful life of 15 years or more and upon the average rate of return on Treasury obligations for items having a useful life or less

than 15 years. Yield rates reported in the current issue of the *Treasury Bulletin* will be used in these computations regardless of any rates of interest which may be used by the agency for other purposes.

(8) *Indirect Costs.* Include any additional indirect costs incurred by the agency resulting from a Government activity for such activities as management and supervision, budgeting, accounting, personnel, legal and other applicable services.

7. *Administering the policy.*

a. *Inventory.* Each agency will compile and maintain an inventory of its commercial or industrial activities having an annual output of products or services costing $50,000 or more or a capital investment of $25,000 or more. In addition to such general descriptive information as may be appropriate, the inventory should include for each activity the amount of the Government's capital investment, the amount paid annually for the products or services involved, and the basis upon which the activity is being continued under the provisions of this Circular. The general descriptive information needed for identifying each activity should be included in the inventory by June 30, 1966. Other information needed to complete the inventory should be added as reviews required in paragraph 7b and c are completed.

b. *"New starts."*

(1) A "new start" should not be initiated until possibilities of obtaining the product or service from commercial sources have been explored and not until it is approved by the agency head or by an assistant secretary or official of equivalent rank on the basis of factual justification for establishing the activity under the provisions of this Circular.

(2) If statutory authority and funds for construction are required before a "new start" can be initiated, the actions to be taken under this Circular should be completed before the agency's budget request is submitted to the Bureau of the Budget. Instructions concerning data to be

submitted in support of such budget requests will be included in annual revisions of Bureau of the Budget Circular No. A-11.

(3) A "new start" should not be proposed for reasons involving comparative costs unless savings are sufficient to outweigh uncertainties and risk of unanticipated losses involved in Government activities.

The amount of savings required as justification for a "new start" will vary depending on individual circumstances. Substantial savings should be required as justification if a large new or additional capital investment is involved or if there are possibilities of early obsolescence or uncertainties regarding maintenance and production costs, prices and future Government requirements. Justification may be based on smaller anticipated savings if little or no capital investment is involved, if chances for obsolescence are minimal, and if reliable information is available concerning production costs, commercial prices and Government requirements. While no precise standard is prescribed in view of these varying circumstances a "new start" ordinarily should not be approved unless costs of a Government activity will be at least 10 percent less than costs of obtaining the product or service from commercial sources.

A decision to reject a proposed "new start" for comparative cost reasons should be reconsidered if actual bids or proposals indicate that commercial prices will be higher than were estimated in the cost comparison study.

(4) When a "new start" begins to operate it should be included in an agency's inventory of commercial and industrial activities.

c. *Existing Government activities.*

(1) A systematic review of existing commercial or industrial activities (including previously approved "new starts" which have been in operation for at least 18 months) should be maintained in each agency under the direction of the agency head or the person designated by him as provided in para-

graph 8. The agency head or his designee may exempt designated activities if he decides that such reviews are not warranted in specific instances. Activities not so exempted should be reviewed at least once before June 30, 1968. More frequent review of selected activities should be scheduled as deemed advisable. Activities remaining in the inventory after June 30, 1968, should be scheduled for at least one additional follow-up review during each three-year period but this requirement may be waived by the agency head or his designee if he concludes that such further review is not warranted.

(2) Reviews should be organized in such a manner as to ascertain whether continued operation of Government commercial activities is in accordance with the provisions of this Circular. Reviews should include information concerning availability from commercial sources of products or services involved and feasibility of using commercial sources in lieu of existing Government activities.

(3) An activity should be continued for reasons of comparative costs only if a comparative cost analysis indicates that savings resulting from continuation of the activity are at least sufficient to outweigh the disadvantages of Government commercial and industrial activities. No specific standard or guideline is prescribed for deciding whether savings are sufficient to justify continuation of an existing Government commercial activity and each activity should be evaluated on the basis of the applicable circumstances.

(4) A report of each review should be prepared. A decision to continue an activity should be approved by an assistant secretary or official of equivalent rank and the basis for the decision should appear in the inventory record for the activity. Activities not so approved should be discontinued. Reasonable adjustments in the timing of such actions may be made, however, in order to alleviate economic dislocations and personal hardships to affected career personnel.

8. *Implementation.* Each agency is responsible for making the provisions of this Circular effective by issuing appro-

priate implementing instructions and by providing adequate management support and procedures for review and follow-up to assure that the instructions are placed in effect.

If overall responsibility for these actions is delegated by the agency head, it should be assigned to a senior official reporting directly to the agency head.

If legislation is needed in order to carry out the purposes of this Circular, agencies should prepare necessary legislative proposals for review in accordance with Bureau of the Budget Circular No. A-19.

9. *Effective date.* This Circular is effective on March 31, 1966.

Charles L. Schultze
Director

APPENDIX E

(STATUTES NOT PRINTED IN APPENDIX TO THE PETITION)

ACTS RELATING TO JURISDICTION AND AUTHORITY OF NATIONAL PARK SERVICE

Act of September 25, 1890, 26 Stat. 478; 16 U.S.C. sec. 43.

Sequoia National Park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury of all timber, mineral deposits, natural curiosities or wonders within said park, and their retention in their natural condition. * * *

Act of March 2, 1899, 30 Stat. 994, 16 U.S.C. sec. 92

Mount Rainier National Park shall be under the exclusive control of the Secretary of the Interior. In addition to the powers and duties enumerated in section 3 of this title, not inconsistent with this section, he shall make regulations providing for the preservation from injury or spoliation of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition. * * *

Act of January 9, 1903, 32 Stat. 765, 16 U.S.C. sec. 142

Wind Cave National Park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be to prescribe such rules and regulations and establish such service as he may deem necessary for the care and management of the same. * * *

Act of June 29, 1906, 34 Stat. 617, 16 U.S.C. sec. 112

Mesa Verde National Park shall be under the exclusive control of the Secretary of the Interior. In addition to the

duties and powers enumerated in section 3 of this title not inconsistent with this section, he shall establish such service as he may deem necessary for the care and management of the same. Such regulations shall provide specifically for the preservation from injury or spoliation of the ruins and other works and relics of prehistoric or primitive man within said park. * * *

Act of May 11, 1910, 36 Stat. 354, 16 U.S.C. sec. 162.

Glacier National Park shall be under the exclusive control of the Secretary of the Interior. In addition to the powers and duties enumerated in section 3 of this title not inconsistent with this section, he shall make and publish such rules and regulations not inconsistent with the laws of the United States as he may deem necessary or proper for the care, protection, management, and improvement of the same, which regulations shall provide for the preservation of the park in a state of nature so far as is consistent with the purposes of section 161 of this title, and for the care and protection of the fish and game within the boundaries thereof. * * *

Act of August 8, 1953, 67 Stat. 495, 16 U.S.C. sec. 1b.

In order to facilitate the administration of the National Park System and miscellaneous areas administered in connection therewith, the Secretary of the Interior is authorized to carry out the following activities, and he may use applicable appropriations for the aforesaid system and miscellaneous areas for the following purposes:

Emergency assistance

1. Rendering of emergency rescue, fire fighting, and cooperative assistance to nearby law enforcement and fire prevention agencies and for related purposes outside of the National Park System and miscellaneous areas.

Utility facilities; erection and maintenance

2. The erection and maintenance of fire protection facilities, water lines, telephone lines, electric lines, and other utility facilities adjacent to any area of the said National

Park System and miscellaneous areas, where necessary to provide service in such area.

Transportation of employees of Carlsbad Caverns National Park; rates

3. Transportation to and from work, outside of regular working hours, of employees of Carlsbad Caverns National Park, residing in or near the city of Carlsbad, New Mexico, such transportation to be between the park and the city, or intervening points, at reasonable rates to be determined by the Secretary of the Interior taking into consideration, among other factors, comparable rates charged by transportation companies in the locality for similar services, the amounts collected for such transportation to be credited to the appropriation current at the time payment is received: *Provided*, That if adequate transportation facilities are available, or shall be available by any common carrier, at reasonable rates, then and in that event the facilities contemplated by this paragraph shall not be offered.

Utility services for concessioners; reimbursement

4. Furnishing, on a reimbursement of appropriation basis, all types of utility services to concessioners, contractors, permittees, or other users of such services, within the National Park System and miscellaneous areas: *Provided*, That reimbursements for cost of such utility services may be credited to the appropriation current at the time reimbursements are received.

Supplies and rental of equipment; reimbursement

5. Furnishing, on a reimbursement of appropriation basis, supplies, and the rental of equipment to persons and agencies that in cooperation with, and subject to the approval of, the Secretary of the Interior, render services or perform functions that facilitate or supplement the activities of the Department of the Interior in the administration of the National Park System and miscellaneous areas: *Provided*, That reimbursements

hereunder may be credited to the appropriation current at the time reimbursements are received.

Contracts for utility facilities

6. Contracting, under such terms and conditions as the said Secretary considers to be in the interest of the Federal Government, for the sale, operation, maintenance, repair, or relocation of Government-owned electric and telephone lines and other utility facilities used for the administration and protection of the National Park System and miscellaneous areas, regardless of whether such lines and facilities are located within or outside said system and areas.

Rights-of-way

7. Acquiring such rights-of-way as may be necessary to construct, improve, and maintain roads within the authorized boundaries of any area of the said National Park System and miscellaneous areas, and the acquisition also of land adjacent to such rights-of-way, when deemed necessary by the Secretary, to provide adequate protection of natural features or to avoid traffic and other hazards resulting from private road access connections, or when the acquisition of adjacent residual tracts, which otherwise would remain after acquiring such rights-of-way, would be in the public interest.

Operation and maintenance of motor and other equipment; rent of equipment; reimbursement

8. The operation, repair, maintenance, and replacement of motor and other equipment on a reimbursable basis when such equipment is used on Federal projects of the said National Park System and miscellaneous areas, chargeable to other appropriations, or on work of other Federal agencies, when requested by such agencies. Reimbursement shall be made from appropriations applicable to the work on which the equipment is used at rental rates established by the Secretary, based on actual or estimated cost of operation, repair, maintenance, depreciation, and equipment management

control and credited to appropriations currently available at the time adjustment is effected, and the Secretary may also rent equipment for fire control purposes to State, county, private, or other non-Federal agencies that cooperate with the Secretary in the administration of the said National Park System and other areas in fire control, such rental to be under the terms of written cooperative agreements, the amount collected for such rentals to be credited to appropriations currently available at the time payment is received.
* * *

FRANCHISE OF D.C. TRANSIT

Act of July 24, 1956
70 Stat. 598

* * *

Section 1. (a) There is hereby granted to D.C. Transit System, Inc., a corporation of the District of Columbia (referred to in this part as the "Corporation") a franchise to operate a mass transportation system of passengers for hire within the District of Columbia and between the District of Columbia and points within the area (referred to in this part as the "Washington Metropolitan Area") comprising all of the District of Columbia, the cities of Alexandria and Falls Church, and the counties of Arlington and Fairfax in the Commonwealth of Virginia and the counties of Montgomery and Prince Georges in the State of Maryland, subject, however, to the rights to render service within the Washington Metropolitan Area possessed, at the time this section takes effect, by other common carriers of passengers: *Provided*, That nothing in this section shall be construed to exempt the Corporation from any law or ordinance of the Commonwealth of Virginia or the State of Maryland or any political subdivision of such Commonwealth or State, or of any rule, regulation, or order issued under the authority of any such law or ordinance, or from applicable provisions of the Interstate Commerce Act and rules and regulations prescribed thereunder.

(b) Wherever reference is made in this part to "D.C. Transit System, Inc." or to the "Corporation", such reference shall include the successors and assigns of D.C. Transit System, Inc.

(c) As used in this part the term "franchise" means all the provisions of this part 1.

* * *

Sec. 3. No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established to operate in the District of Columbia without the prior issuance of a certificate by the Public Utilities Commission of the District of Columbia (referred to in this part as the "Commission") to the effect that the competitive line is necessary for the convenience of the public.

* * *

Sec. 6. The Corporation is hereby authorized and empowered to engage in special charter or sightseeing services subject to compliance with applicable laws, rules and regulations of the District of Columbia and of the municipalities or political subdivisions of the States in which such service is to be performed, and with applicable provisions of the Interstate Commerce Act and rules and regulations prescribed thereunder.

* * *

WASHINGTON METROPOLITAN AREA TRANSIT REGULATION COMPACT, AS APPROVED BY ACT OF SEPTEMBER 15, 1960, 74 STAT. 1031 ET SEQ., D.C. CODE (1967 Ed. §§ 1-1410 to 1416

* * *

A. Consent Legislation

Sec. 6. Jurisdiction is hereby conferred (1) upon the United States Court of Appeals for the Fourth Circuit and the United States Court of Appeals for the District of Columbia Circuit, respectively, to review orders of the Washington Metropolitan Area Transit Commission as provided by section 17, article XII, title II, of the Washington Metropolitan Area Transit Regulation Compact, and (2) upon the United States district courts to enforce the provisions of said title II as provided in section 18, article XII, title II, of said Compact.

Sec. 7. (a) The right to alter, amend, or repeal this Act is hereby expressly reserved.

(b) The Washington Metropolitan Area Transit Commission shall submit to Congress copies of all periodic reports made by the Commission to the Governors, the Commissioners of the District of Columbia and/or the Legislatures of the compacting States.

(c) The Congress or any committee thereof shall have the right to require the disclosure and furnishing of such information by the Washington Metropolitan Area Transit Commission as is deemed appropriate by the Congress or any of its committees. Further, Congress or any of its committees shall have access to all books, records and papers of the Washington Metropolitan Area Transit Commission as well as the right of inspection of any facility use, owned, leased, regulated or under the control of said Commission.

Approved September 15, 1960.

* * *

B. Compact

ARTICLE II

The signatories hereby create the "Washington Metropolitan Area Transit Commission", hereinafter called the Commission, which shall be an instrumentality of the District of Columbia, the Commonwealth of Virginia and the State of Maryland, and shall have the powers and duties set forth in this compact and such additional powers and duties as may be conferred upon it by subsequent action of the signatories. The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation and improvement of transit and the alleviation of traffic congestion within the Metropolitan District on a coordinated basis, without regard to political boundaries within the Metropolitan District, as set forth herein.

* * *

ARTICLE X

Each of the signatories pledges to each of the other signatory parties faithful cooperation in the solution and control of transit and traffic problems within the Metropolitan District and, in order to effect such purposes, agrees to enact any necessary legislation to achieve the objectives of the compact to the mutual benefit of the citizens living within said Metropolitan District and for the advancement of the interests of the signatories hereto.

* * *

ARTICLE XII

Transportation Covered

* * *

1. (b) The provisions of this Title II shall not apply to transportation as specified in this section solely within the Commonwealth of Virginia and to the activities of persons engaged in such transportation, nor shall any provision of this Title II be construed to infringe the exercise of any

power or the discharge of any duties conferred or imposed upon the State Corporation Commission of the Commonwealth of Virginia by the Virginia Constitution.

* * *

Definitions

2. As used in this Act –

(a) The term "carrier" means any person who engages in the transportation of passengers for hire by motor vehicle, street railroad, or other form or means of conveyance.

(b) The term "motor vehicle" means any automobile, bus, or other vehicle propelled or drawn by mechanical or electrical power on the public streets or highways of the Metropolitan District and used for the transportation of passengers.

(c) The term "street railways" means any streetcar, bus, or other similar vehicle propelled or drawn by electrical or mechanical power on rails and used for transportation of passengers.

(d) The term "taxicab" means any motor vehicle for hire (other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules) designed to carry eight persons or less, not including the driver, used for the purpose of accepting or soliciting passengers for hire in transportation subject to this Act, along the public streets and highways, as the passengers may direct.

(e) The term "person" means any individual, firm, copartnership, corporation, company, association or joint stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

* * *

Existing Rules, Regulations, Orders, and Decisions

21. All rules, regulations, orders, decisions, or other action prescribed, issued, made, or taken by the Interstate

Commerce Commission, the Public Utilities Commission of the District of Columbia, the Public Service Commission of Maryland, or the State Corporation Commission of Virginia, and which are in force at the time this section takes effect, with respect to transportation or persons subject to this Act, shall remain in effect, and be enforceable under this Act and in the manner specified by this Act, according to their terms, as though they had been prescribed, issued, made, or taken by the Commission pursuant to this Act, unless and until otherwise provided by such Commission in the exercise of its powers under this Act.

* * *

OTHER ACTS

Act of March 3, 1925, 43 Stat. 1126, D.C. Code § 40-613

Nothing contained in this chapter shall be construed to interfere with the exclusive charge and control prior to March 3, 1925, committed to the Director of the National Park Service over the park system of the District, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control, subject to the penalties prescribed in this chapter. (Mar. 3, 1925, 43 Stat. 1126, ch. 443,

Act of February 27, 1931, 46 Stat. 1426, D.C. Code § 40-603(e)

(e) The commissioners may in the administration of this chapter, section or any provision of the Traffic Acts for the District, exercise any power or perform any duty conferred on them by this chapter through such officers and agents of the District as the commissioners may designate. The commissioners are further authorized and empowered to make, modify, repeal, and enforce reasonable rules and

regulations in respect to the movement of traffic, speed, length, weight, height, width, routing, and parking of vehicles, and the establishment and location of hack stands: *Provided*, That the commissioners shall establish and locate parking areas in the vicinity of governmental establishments for use only by members of Congress and governmental officials when on official business: *Provided further*, That as to all common carriers by vehicle which enter, operate in, or leave the District of Columbia, the power to route such vehicles within the District of Columbia, to regulate their equipment other than that specifically named elsewhere in this chapter, to regulate their schedules and their loading and unloading, to locate their stops, and all platforms and loading zones and to require the appropriate marking thereof, is vested in the Public Service Commission of the District of Columbia: *Provided further*, That whenever any order, rule, or regulation of the Public Service Commission shall be made relative to the routing of common carrier vehicles, to the location of their stops, to the establishment or change in location of platforms, loading zones, or other spaces on the public highway to be reserved for any purpose whatsoever, or to the appropriate marking thereof, or whenever any order, rule, or regulation of the District commissioners shall be made which affects such routing, stops, platforms, zones, or spaces, said order, rule, or regulation shall, prior to promulgation, be referred to a joint board to be composed of the commissioners of the District of Columbia and the members of the Public Service Commission, which is hereby authorized and created. Such joint board may, by the affirmative action of any three members thereof, adopt rules and regulations which, when promulgated, shall be binding and shall have the full force and effect of law, and the engineer commissioner shall have but one vote. Any of said rules and regulations, after reasonable trial and within a reasonable time, may be changed by the joint board upon the request of the commissioners of the District of Columbia or of the Public Service Commission.

Act of August 9, 1935, 49 Stat. 543, Part II of the Interstate Commerce Act

Section 203(b)4, 49 U.S.C. sec. 303(b)4

(b) Nothing in this chapter, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be contrued to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; or (3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations; or (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments; or (4a) motor vehicles controlled and operated by any farmer when used in the transportation of his agricultural (including horticultural) commodities and products thereof, or in the transportation of supplies to his farm; or (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined;

Section 209(a)(1), 49 U.S.C. sec. 309(a)(1)

(a) (1) Except as otherwise provided in this section and in section 310a of this title, no person shall engage in the business of a contract carrier by motor vehicle in interstate or foreign commerce or any public highway or within any reservation under the exclusive jurisdiction of the United States unless there is in force with respect to such carrier a permit issued by the Commission, authorizing such person to engage in such business: * * *

* * * *Provided, further*, That nothing in this chapter shall be construed to repeal, amend, or otherwise modify any Act or Acts relating to national parks and national monuments under the administrative jurisdiction of the Secretary of the Interior, or to withdraw such authority or control as may by law be held by the Secretary of the Interior with respect to the admission and operation of motor vehicles in any national monument of the United States.